

JUDGE DANIELS

Anthony Lo Cicero (AL 7538)

David Mitnick (DM 0064)

AMSTER, ROTHSTEIN & EBENSTEIN LLP

90 Park Avenue

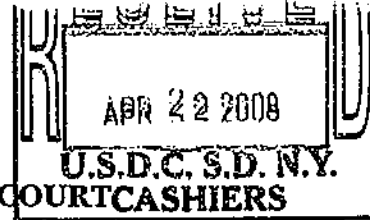
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Attorneys for Plaintiff

08 CV 3809



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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Curtis Publishing Company, Inc.,	:	Civil Action No.:
	:	
Plaintiff,	:	
	:	
v.	:	COMPLAINT AND
	:	DEMAND FOR JURY
ESPN, Inc.,	:	
	:	
Defendant.	:	

-----x

Plaintiff, Curtis Publishing Company, Inc. ("Plaintiff" or "Curtis"), for its Complaint, alleges as follows:

The Parties, Jurisdiction and Venue

1. Plaintiff is a corporation organized and existing under the laws of the state of Indiana with a principal place of business at 1000 Waterway Boulevard, Indianapolis, IN 46202.

2. Upon information and belief, Defendant, ESPN, Inc. ("ESPN") is a corporation having a principal place of business at ESPN Plaza, Bristol, CT 06010-7454.

3. Upon information and belief, ESPN maintains a place of business within this Judicial District and is transacting and doing business within this Judicial District and is subject to the jurisdiction of this Court pursuant to the laws of this State and Rule 4 of the Federal Rules of Civil Procedure.

4. This Court has jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331 and 1338.

5. Venue is proper pursuant to 28 U.S.C. §§ 1391 and 1400(a).

COUNT I
Copyright Infringement Against Defendant

6. This claim arises under the Copyright Laws of the United States, 17 U.S.C. §101 *et seq.*

7. Plaintiff is the exclusive licensee of the copyrights for the artwork/illustrations that have appeared in the flagship publication, *The Saturday Evening Post*, including the copyrights in the illustrations created for *The Saturday Evening Post* by Mr. Norman Rockwell. Mr. Rockwell is perhaps America's best known artist and illustrator.

8. One of Mr. Rockwell's most famous illustrations is a work entitled *Bottom of the 6th*. *Bottom of the 6th* first appeared in the April 23, 1949 issue of *The Saturday Evening Post*. A copy of *Bottom of the 6th* as it appeared on the cover of that issue is attached hereto as Exhibit A.

9. *Bottom of the 6th* is the subject of United States Copyright Registration No. B 187,666, filed and Renewal Registration No. 633,022 (collectively "the Copyright

Registration”) and remains valid and subsisting since it was originally filed in 1949. A copy of the Renewal Registration is attached hereto as Exhibit B.

10. *Bottom of the 6th* is one of the most famous illustrations in the history of baseball and the original artwork was donated to the Baseball Hall of Fame in Cooperstown, New York. Millions of visitors to the Baseball Hall of Fame have had the chance to view and enjoy the work.

11. In 2003 *Bottom of the 6th*¹ was one of the featured works included in an exhibition entitled “Baseball As America” which was organized by the Baseball Hall of Fame and Museum. The exhibition visited some of the most famous museums in the country, including the American Museum of Natural History, in New York, and the Smithsonian Institute in Washington, D.C. among others. Attached as Exhibit C is a printout of a May 30, 2006 Press Release from the Baseball As America website (www.baseballasamerica.org) which chronicles the exhibitions tour as well as a listing entitled “Featured Artifacts” which lists some of the more important artifacts included in the exhibition.

12. Plaintiff is engaged, *inter alia*, in the business of licensing its library/catalog of copyrighted images and derives substantial revenue by licensing its copyrighted images to publications, organizations, and businesses of every type and from all over the world. Plaintiff expends considerable time and money in properly maintaining its catalog of copyrighted images, operating its website which displays the images, and advertising its catalog and services in the marketplace.

¹ *Bottom of the 6th* has also been referred to as “*The Three Umpires*” as it is in Exhibit C.

13. The April 23, 1949 issue of *The Saturday Evening Post* was one of *The Saturday Evening Post's* most famous issues, and *Bottom of the 6th* is one of Plaintiff's most popular and often licensed images.

14. Upon information and belief, in or about mid-July 2007 ESPN broadcast an original dramatic television series entitled *The Bronx is Burning* which told the story of the 1977 New York Yankees baseball club. A number of well-known actors had prominent roles in this dramatic television series, including but not limited to, John Turturro, Oliver Platt, and Daniel Sunjata. Attached hereto as Exhibit D are the biographies for the above listed actors which can be found at the website www.bronxisburning.com by clicking on the tab entitled "THE DUGOUT".

15. In or about mid-July 2007 Plaintiff was informed that *The Bronx is Burning* used *Bottom of the 6th* as an entire screen shot during the second episode of the series entitled "Team in Turmoil".² A printout of *Bottom of the 6th* as it appears in *The Bronx is Burning* is attached hereto as Exhibit E.

16. Upon information and belief, the Infringing Work was broadcast, televised, published, and/or sold by ESPN in July 2007 and thereafter has been manufactured, distributed, and/or sold by ESPN in DVD and/or VHS format (collectively hereinafter "the Infringing Work").

² The episode title appears on the DVD menu section. The screen shot of *Bottom of the 6th* appears in scene two of the second episode. This segment of the television series was broadcast by ESPN on or about July 17, 2007.

17. On or about July 19, 2007, Plaintiff sent an e-mail to ESPN's counsel informing them that ESPN did not have a license to use *Bottom of the 6th* and put ESPN on notice of the infringement of Plaintiff's rights in its copyrighted illustration.

18. The broadcast, reproduction, manufacture, publication, distribution, and/or sale by ESPN of the Infringing Work was without the permission, license, or consent of Plaintiff.

19. ESPN's acts alleged herein constitute violations of the exclusive rights of Plaintiff under 17 U.S.C. §§ 106 and 113 and constitute infringement under 17 U.S.C. §501.

20. Upon information and belief, the copying of *Bottom of the 6th* by ESPN was with full knowledge of Plaintiff's rights and its infringement was knowing and willful.

21. Plaintiff has suffered and will continue to suffer damage to its business, including loss of its reputation for exclusivity of ownership of its copyrighted catalog of illustrations which includes *Bottom of the 6th*, as well as loss of sales.

22. ESPN's acts are and have been damaging to Plaintiff in an amount to be determined at trial and are of a type for which Plaintiff has no adequate remedy at law.

THEREFORE, Plaintiff requests judgment against ESPN as follows:

A. ESPN and its officers, agents, servants, employees, and attorneys and all those in active concert and participation with them, be preliminarily and permanently enjoined from:

(i) manufacturing, reproducing, displaying, publishing, vending, distributing, selling, archiving, promoting, importing, exporting,

and/or advertising, assisting, inducing, or contributing to the manufacturing, reproducing, displaying, publishing, vending, distributing, selling, promoting, and/or advertising any product that contains substantial material copied from and/or substantially similar to the Infringing Work;

(ii) otherwise infringing the copyright in Plaintiff's *Bottom of the 6th* illustration, including but not limited to the copyright represented by the Copyright Registration.

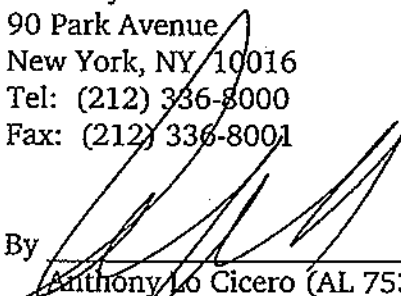
- B. During the pendency of this lawsuit ESPN be required to deliver to Plaintiff for storage or destruction, all goods which include the Infringing Work, including but not limited to the Infringing Work, and that ESPN be enjoined from otherwise televising, broadcasting, manufacturing, distributing, and/or selling the Infringing Work.
- C. ESPN be required to pay to Plaintiff such actual damages as Plaintiff sustained in consequence of the infringement by ESPN and to account for all gains, profits and advantages, with full costs to be allowed to Plaintiff as provided in 17 U.S.C. §§ 504 and 505.
- D. Attorneys' fees be awarded to Plaintiff as provided in 17 U.S.C. §505.
- E. Plaintiff be entitled to elect that statutory damages be awarded to Plaintiff as provided in 17 U.S.C. §504.
- F. Plaintiff be granted such other and further relief as the Court may deem just and proper.

Plaintiff demands a jury trial.

Respectfully submitted,

AMSTER, ROTHSTEIN & EBENSTEIN LLP
Attorneys for Plaintiff
90 Park Avenue
New York, NY 10016
Tel: (212) 336-8000
Fax: (212) 336-8001

By


Anthony Lo Cicero (AL 7538)

David Mitnick (DM 0064)

Dated: New York, NY
April 21, 2008

EXHIBIT A

THE SATURDAY EVENING POST

APRIL 23, 1949

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What of Our Future?

By BERNARD M. BARUCH

WHY COPS TURN CROOKED

By David G. Wittels



EXHIBIT B

Page 3

Certificate

Registration of a Claim to Renewal Copyright

This is To Certify that the statements set forth on this certificate have been made a part of the records of the Copyright Office. In witness whereof the seal of the Copyright Office is hereto affixed.

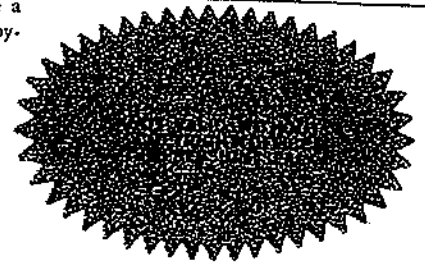
*Register of Copyrights
United States of America*

FORM R

REGISTRATION NO.

R 633022

DO NOT WRITE HERE



1. Renewal Claimant(s), Address(es), and Statement of Claim:

(a) Name The Saturday Evening Post Company

Address 1100 Waterway Boulevard, Indianapolis, Indiana 46202

Claiming as Proprietor of copyright in a composite work

(b) Name

Address

Claiming as

(c) Name

Address

Claiming as

2. (a) Title:

THE SATURDAY EVENING POST

(b) Renewable Matter:

(c) Contribution to Periodical or Other Composite Work:

(Title of periodical or composite work)

If a periodical, give: Vol. 221; No. 43; Issue Date April 23, 1949

3. Authors of Renewable Matter:

4. Facts of Original Registration:

Original registration number: Class B; No. 187666

If registered as published, give date of publication April 20, 1949
(Month) (Day) (Year)

If registered as unpublished, give date of registration
(Month) (Day) (Year)

Original copyright claimant The Curtis Publishing Company

Complete all applicable spaces on next page

EXAMINER

5. Deposit statement:

The Curtis Publishing Company

6. Send correspondence to:

Name: William S. Gardiner Address: 1100 Waterway Blvd., Indpls., Ind. 46202

7. Send certificate to:

(Type or
print Name
name and
address) Address

William S. Gardiner

1100 Waterway Boulevard

Rights and Permissions

(Number and street)

Indianapolis,

(City)

Indiana

(State)

46202

(ZIP Code)

Information concerning renewal copyright

Two important points must be kept in mind with respect to renewal copyright: (1) there are strict time limits for securing it, and (2) it can be claimed only by certain specified persons named in the law.

Time limits

When to renew. The original term of copyright in a published work lasts for 28 years from the date of publication; in the case of a work originally registered in unpublished form, the copyright term lasts for 28 years from the date of registration in the Copyright Office. In either case, the copyright may be renewed for a second 28-year term only if a claim is registered in the Copyright Office within the last (28th) year of the original copyright term. For example, a work copyrighted on June 15

1946, would be eligible for renewal between June 15, 1973, and June 15, 1974.

Caution: Unless a valid renewal claim and fee are received in the Copyright Office before the first copyright term expires, copyright protection is lost permanently and the work enters the public domain. The Copyright Office has no discretion to extend the renewal time limit.

How to register your claim

By mail. To follow: Complete an application for renewal registration on Form 3 and send it to the Register of Copyrights, Washington, D.C. 20540. The application should be accompanied by the registration fee of \$6. Do not send copies of the work.

Who may claim renewal

Except in the case of four specific types of works, the law gives the right to claim renewal to the individual author of the work, regardless of who owned the copyright during the original term. If the author is deceased, the statute gives the right to claim renewal to certain of his statutory beneficiaries as explained below. The present owner (proprietor) of a copyright is entitled to claim renewal only in the cases listed in Paragraph B, below.

A. The following persons may claim renewal in all types of works except those enumerated in Paragraph B, below.

1. The author, if living. State the claim as: *the author*.

If there is an *surviving widow, widower, or child*. State the

2. The *widow, widower, and children* of the author, if the author is not living. State the claim as: *the widow (or widower) of the author* and as *the child* (Name of author).

claim as: *the executor(s) of the author* (Name of author).

(Children of the deceased author) (Name of author)

3. The next of kin of the author, if the author left no will and if there is no surviving widow, widower, or child. State the claim as: *the next of kin of the deceased author*.

4. The author's executor(s), if the author left a will and

(Name of author).

B. In the case of the following four types of works, the on-printer (owner of the copyright at the time of renewal registration) may claim renewal:

1. Posthumous work (work first published and copyrighted after the death of the author). State the claim as: *proprietor of copyright in a posthumous work*.

claim as: *proprietor of copyright in a work copyrighted*

2. Periodical, cyclopedic, or other composite work. State the claim as: *proprietor of copyright in a composite work*.

by a corporate body otherwise than as assignee or licensee of the individual author. (This type of claim is considered appropriate in relatively few cases.)

3. "Work copyrighted by a corporate body otherwise than as assignee or licensee of the individual author." State the

4. Work copyrighted by an employer for whom such work was made for hire. State the claim as: *proprietor of copyright in a work made for hire*.

FOR COPYRIGHT OFFICE USE ONLY	
Application received	
12-176	
Fee received	

EXHIBIT C

Baseball As America

Page 1 of 3



Press Releases

May 30, 2006

Baseball Hall of Fame Extends Successful National Tour of *Baseball As America*

Ernst & Young to continue as lead national sponsor for the extended exhibition, bringing historic artifacts from Cooperstown to new regions across country

[Return to the web site version of this press release](#)

Cooperstown, NY — May 30, 2006 — The National Baseball Hall of Fame and Museum announced today that it has extended the national tour of its traveling exhibition *Baseball As America*, the first major exhibition to examine the relationship between baseball and American culture. Ernst & Young welcomed the opportunity to continue its role as the exhibition's exclusive national sponsor and will support the extension of the tour organized by the Baseball Hall of Fame. The Minnesota Historical Society in St. Paul will be the first stop on the tour extension in fall 2006 and Great Lakes Science Center in Cleveland will present the exhibition in summer 2007. Additional venues will be announced shortly.

"*Baseball As America* has been so successful that it was a very easy decision to continue its national tour," said Hall of Fame Chairman Jane Forbes Clark. "Our goal was to be able to share the Hall of Fame's wonderful collections with as wide of an audience as possible and with Ernst & Young as the national sponsor, we are more than accomplishing our goal. Ernst & Young, with their commitment to excellence, has been a perfect sponsor and we're delighted to continue the tour with them."

Currently on its final stop of the original 10-city tour, *Baseball As America* is now showing at the Henry Ford Museum in Dearborn, Michigan, where it opened March 11 and closes on September 6. Through the first nine venues, the exhibition drew 1,852,528 visitors, more than doubling the reach of the Baseball Hall of Fame and Museum to audiences across the country visiting Cooperstown.

"The *Baseball As America* tour has been a 'hit' with fans in every city it's been to, but in baseball you can't call a hit a homerun until you have touched all the bases, and by adding these extra cities we intend to do just that," said James S. Turley, Chairman and CEO, Ernst & Young. "The *Baseball As America* tour has been a homerun for fans and for the people of Ernst & Young, and we're proud to be part of it," Turley added.

Baseball As America premiered at the American Museum of Natural History in New York on March 16, 2002, and has subsequently traveled to nine other leading museums, including the Natural History Museum of Los Angeles County; Field Museum of Natural History in Chicago; Cincinnati Museum Center; Florida International Museum in St. Petersburg; National Museum of

Baseball As America

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Natural History, Smithsonian Institution in Washington, DC; Missouri Historical Society in St. Louis; Museum of Fine Arts in Houston; and Oakland Museum of California.

Organized by the National Baseball Hall of Fame and Museum, and culled from its unparalleled collections, this ground-breaking exhibition marks the first time that these Hall of Fame treasures have left their legendary home in Cooperstown, New York. Through the exploration of a broad range of themes, including immigration, nationalism, integration, technology and popular culture, *Baseball As America* reveals how baseball has served as both a reflection of, and catalyst for the evolution of American society.

Baseball As America is organized in thematic sections to explore the changing roles baseball has played in American culture and history, and to examine its unique position in our national life as a sport that holds the status of an art, a science, and a secular religion. They examine such aspects of The Game as the rituals of fans and players; myth making and the role of heroes; the impact of technology on performance; segregation, integration and baseball's role as a ladder of mobility for ethnic groups; The Game's evolution as a business; the physics of the home run and the curve ball; and baseball's presence throughout popular culture as a subject and metaphor, among many others. Ultimately, *Baseball As America* reveals how the development of American culture owes so much to a 19th-century game, affecting everything from our language and literature to movies, mass communication, and art.

The exhibition includes approximately 500 of the Museum's most precious artifacts, dating from baseball's early roots in the 19th century to today, ranging from uniforms, balls, bats and gloves, to books, recordings, artworks and films, to historic documents, advertising and ephemera. Among the highlights of the exhibition are The Game's most sacred relic, the Doubleday Ball, from baseball's mythic first game in 1839; Jackie Robinson's 1956 Brooklyn Dodgers jersey; a variety of artifacts from the All-American Girls Professional Baseball League; record-setting bats from the Mark McGwire-Sammy Sosa home run chase of 1998, as well as those of Babe Ruth (home run #60 in 1927) and Roger Maris (home run #61 in 1961); FDR's January 15, 1942 "Green Light" letter calling for the continuation of professional baseball as a way to heighten morale during World War II; Norman Rockwell's 1949 painting *The Three Umpires*; the "Wonder Boy" bat from the movie *The Natural*; a 1908 Thomas Edison recording of "Casey at the Bat"; "Shoeless" Joe Jackson's shoes; and the most valuable baseball card in the world, the T206 Honus Wagner.

The exhibition is accompanied by a major publication, also entitled *Baseball As America*, published by the National Geographic Society. The book explores and illuminates the themes of the exhibition and is illustrated with images of objects in the exhibition as well as historical photographs. A unique compendium, featuring 45 newly-commissioned and 30 classic essays, commentaries and literature from a wide spectrum of writers, commentators, scholars and humorists, the book has 320 pages with 200 illustrations, many of them in full-color.

Some of the specially commissioned pieces include authors such as: news anchor Tom Brokaw on baseball's importance to wartime America; filmmaker Penny Marshall on the making of *A League of Their Own*; best-selling novelist John Grisham on the significance of baseball to children; architect David Rockwell on designing stadium interiors for fans; chef and cookbook author Molly O'Neill on the primal importance of the hot dog to baseball; and baseball writer Roger Kahn on the Brooklyn Dodgers; among many others. The classic pieces include singer/songwriter Paul Simon on Joe DiMaggio as an icon; Pulitzer Prize-winning humor columnist Dave Barry on the most resonant baseball story of 1960; and writer Roger Angell on the destruction of the Polo Grounds; to note a few. Jules Tygiel, author of *Past Time: Baseball*

Baseball As America

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As History and a recent biography of Jackie Robinson, has written the introduction to the book and a series of essays on the themes explored throughout.

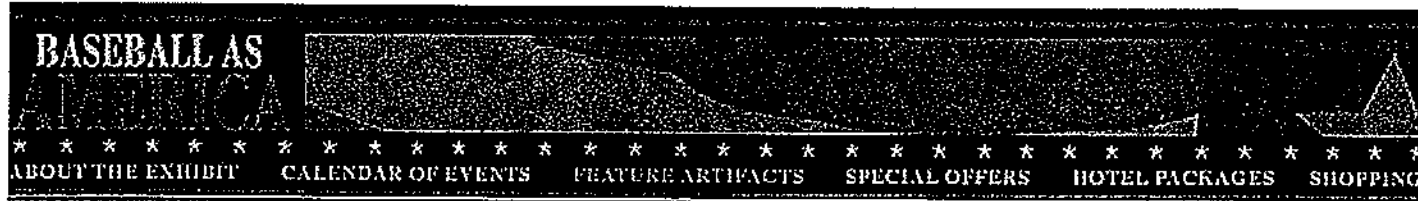
The National Baseball Hall of Fame and Museum preserves history, honors excellence and connects generations. An independent, not-for-profit educational institution dedicated to fostering an appreciation of the historical development of baseball and its impact on our culture, the Hall of Fame was established in Cooperstown, New York in 1939 as the definitive repository of The Game's treasures.

Comprised of the Museum, with over 35,000 artifacts, and the Library and Archive, which houses more than 2.6 million documents, recordings, and photographs, the Hall of Fame exhibits and interprets its vast collections for a global audience. The Hall of Fame also bestows the highest individual honor awarded to players of our national pastime by marking their achievements with a plaque in the Hall of Fame Gallery. For more information on the National Baseball Hall of Fame and Museum, please call 888-HALL-OF-FAME, or visit us on the web at www.baseballhalloffame.org.

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Feature Artifacts

The Doubleday Ball – the game's most "sacred" relic and the first artifact displayed in Cooperstown

Trophy given to Lou Gehrig at his Yankee Stadium farewell

Jack Norworth's 1908 manuscript, "Take Me Out to the Ball Game"

Single-season record-breaking home run bats used by Babe Ruth, Mark McGwire, Sammy Sosa and Roger Maris

The most prized baseball card, The Honus Wagner T206 baseball card of 1909

Brooklyn Dodgers jersey worn by Jackie Robinson

A ticket dated 7/4/39 to Lou Gehrig Day

Mrs. Lou Gehrig's charm bracelet

Norman Rockwell painting "The Three Umpires (Bottom of the Sixth)"

A 1952 Mickey Mantle Rookie baseball card

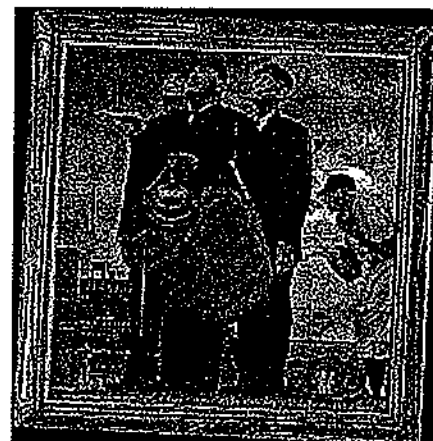
A Barnum & Bailey Elephant Baseball Team poster

Yogi Berra's Glove with caught ball, pitched by Don Larsen, from the only perfect game in World Series history



Honus Wagner T206 Baseball Card

National Baseball Hall of Fame and Museum



Norman Rockwell's "The Three Umpires"

National Baseball Hall of Fame and Museum

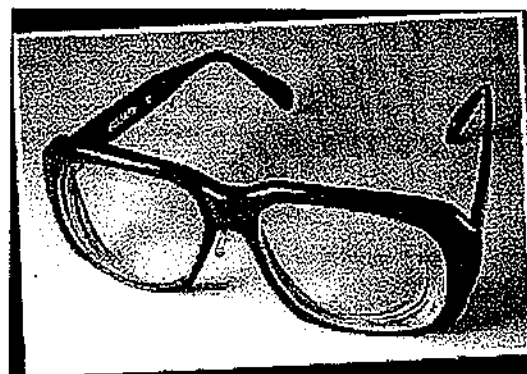
Eyeglasses worn by legendary broadcaster Harry Caray

An early hot dog vending bucket, 1910

Sammy Sosa's 62nd home-run ball

The first baseball pitched by Cy Young, in the first World Series in 1903

Rare photographs and possessions from baseball greats like Jackie Robinson and Joe Di Maggio, as well as other heroes



Harry Caray's Eyeglasses

National Baseball Hall of Fame and Museum

A LIST OF DETROIT-BASED ARTIFACTS

A Jersey worn by Hank Greenberg, 1946

Spikes worn by "Wahoo" Sam Crawford

Cap worn by Sparky Anderson for his 2158th career win

Bat used by Alan Trammell, two run home run, 1984 World Series

George Kell Silver Batting Title Trophy bat, 1949

Baseball As America | The Henry Ford

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Ty Cobb's glove, c.1912

Glove worn by Denny McLain during his 30th win, 1968

Catcher's mask worn by Mickey Cochrane

Al Kaline's ball that hit 300th home run

Ring from 1933 ASG, Charlie Gehringer

Detroit Tigers pennant with Mark "The Bird" Fidrych picture

Ball signed by Alan Trammell and Lou Whittaker on 9/13/95, their 1915th game together, breaking the AL teammates record



Hot Dog Vending Bucket, c. 1910

National Baseball Hall of Fame and Museum

Baseball card display featuring players Mayo Smith, Willie Horton, Norm Cash, Ron Leflore, Germany Schaefer, Ivan Rodriguez, Kirk Gibson



Ticket, Lou Gehrig Day, 7/4/1939

National Baseball Hall of Fame and Museum

Microphone used by legendary broadcaster Ernie Harwell

Uniform patch commemorating Tiger Stadium 1912-1999

Bennett Park photograph

Medal presented to Wolverine's top hitter Dan Brouthers by the Detroit Free Press, 1886

Detroit Wolverines 1887 photograph

Turkey Stearnes photograph

1920 Detroit Stars team photograph

* * * * *

Baseball As America, the most significant exhibition of baseball artifacts and history was organized by the National Baseball Hall of Fame and Museum in Cooperstown, New York.



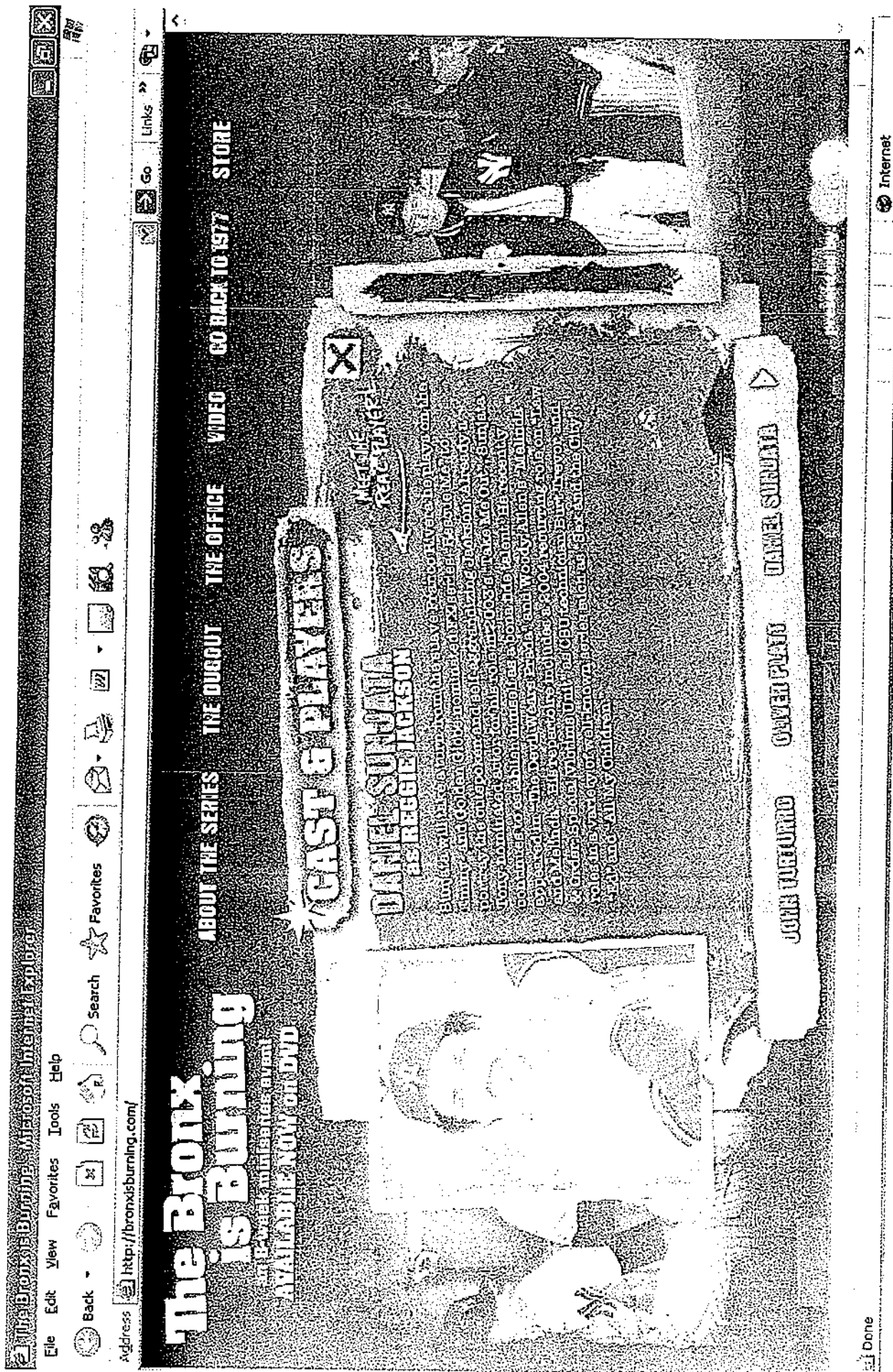
Mrs. Gehrig Charm Bracelet

National Baseball Hall of Fame and Museum

About the Exhibit • Calendar of Events • Feature Artifacts • Special Offers • Hotel Packages • Shopping



EXHIBIT D



[illegible]

EXHIBIT E

